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4 UNITED STATES DISTRICT COURT
5 DISTRICT OF NEVADA

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7 THERESA HANSEN, an individual,
8 Plaintiff,

Case No. 2:19-cv-00608-RFB-CWH

ORDER

9 v.

10 ALBERTSON'S LLC, a Delaware Limited
11 Liability Company; DOES I through X; and
12 ROE CORPORATIONS XI through XX,
inclusive,
13 Defendants.

14 **I. INTRODUCTION**

15 The Court has reviewed the record in this case and finds that the Petition for Removal (ECF
16 No. 1) does not adequately establish the amount in controversy as required for diversity
17 jurisdiction.

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19 **II. PROCEDURAL BACKGROUND**

20 Plaintiffs sued Defendant on February 7, 2019 in the Eighth Judicial District Court of
21 Nevada, claiming damages resulting from Plaintiff falling in Defendant's retail store. In the
22 complaint, Plaintiffs seek general damages in an amount exceeding \$15,000, special damages,
23 punitive damages, attorney's fees, and costs.

24 On January 29, 2019, Plaintiff sought exemption from Nevada's arbitration program
25 ("arbitration program"), which requires arbitration for any civil case initiated in the state district
26 courts in which the "probable jury award value" exceeds \$50,000 per plaintiff. Nevada Arbitration
27 Rule ("N.A.R.") 3(A). Plaintiffs filed a request for exemption from the arbitration program,
28 asserting medical damages totaling \$18,351.81. Based on Plaintiff's request for exemption from

1 the arbitration program, Defendant removed this matter to this Court on April 10, 2019, citing
2 diversity jurisdiction as the basis for federal jurisdiction.

3 4 **III. LEGAL STANDARD**

5 Federal courts are courts of limited jurisdiction. In re Hunter, 66 F.3d 1002, 1005 (9th Cir.
6 1995). A federal court therefore has a *sua sponte* obligation to ensure that it has subject matter
7 jurisdiction. Kwai Fun Wong v. Beebe, 732 F.3d 1030, 1036 (9th Cir. 2013) (citations omitted);
8 see also Gonzalez v. Thaler, 565 U.S. 134, 141 (2012) (“When a requirement goes to subject-
9 matter jurisdiction, courts are obligated to consider *sua sponte* issues that the parties have
10 disclaimed or have not presented.”). Indeed, “subject matter jurisdiction can never be waived or
11 forfeited.” Gonzalez, 565 U.S. at 134.

12 A defendant may remove to federal court a case initially filed in state court if the federal
13 court would have original jurisdiction. 28 U.S.C. § 1441(a). When a case is removed solely under
14 28 U.S.C. § 1441(a), all defendants that have been properly joined and served must either join in,
15 or consent to, removal. 28 U.S.C. § 1446(b)(2).

16 “Removal and subject matter jurisdiction statutes are strictly construed, and a defendant
17 seeking removal has the burden to establish that removal is proper and any doubt is resolved
18 against removability.” Hawaii ex rel. Louie v. HSBC Bank Nev., N.A., 761 F.3d 1027, 1034 (9th
19 Cir. 2014) (citation and quotation marks omitted). A federal court should remand a case to state
20 court if any doubt exists as to the right to removal. Matheson v. Progressive Specialty Ins. Co.,
21 319 F.3d 1089, 1090 (9th Cir. 2003) (footnote omitted). Further, when “it is unclear or ambiguous
22 from the face of a state-court complaint whether the requisite amount in controversy is pled, the
23 removing defendant bears the burden of establishing, by a preponderance of the evidence, that the
24 amount in controversy exceeds the jurisdictional threshold.” Urbino v. Orkin Servs. of California,
25 Inc., 726 F.3d 1118, 1121–22 (9th Cir. 2013).

26 Federal courts have original jurisdiction over actions where the matter in controversy is
27 greater than \$75,000 if there is complete diversity between the plaintiff and each defendant. 28
28 U.S.C. § 1332(a). A defendant must remove the matter within one of two thirty-day windows:

1 “during the first thirty days after the defendant receives the initial pleading or during the first thirty
2 days after the defendant receives a paper ‘from which it may first be ascertained that the case is
3 one which is or has become removable’ if ‘the case stated by the initial pleading is not removable.’”
4 Harris v. Bankers Life & Cas. Co., 425 F.3d 689, 694 (9th Cir. 2005) (quoting 28 U.S.C. §
5 1446(b)(3)). “[N]otice of removability under § 1446(b) is determined through examination of the
6 four corners of the applicable pleadings, not through subjective knowledge or a duty to make
7 further inquiry.” Id.

8 9 **IV. DISCUSSION**

10 After conducting a *sua sponte* review to determine its jurisdiction over this matter, the
11 Court finds that Defendant has failed to adequately establish the requisite amount in controversy
12 to establish diversity jurisdiction. While Plaintiff seeks \$18,351.81 in the request for exemption
13 from arbitration, the amount must exceed \$75,000.00 to meet the jurisdictional threshold.
14 Speculation is insufficient to establish removal jurisdiction. See Corral, 878 F.3d at 774; see also
15 Ibarra, 775 F.3d at 1197. While Plaintiff seeks over \$18,000.00 in medical damages, the case does
16 not meet the higher jurisdictional threshold of \$75,000.00. Indeed, the Defendant actually opposed
17 the Plaintiff’s claim of arbitration exemption based upon a threshold of \$50,000, arguing that there
18 was insufficient evidence of even \$50,000 in damages. The amount in controversy cannot be met
19 by mere speculation as to damages. The Court therefore finds that Defendant has not met its
20 burden of establishing the amount in controversy exceeds \$75,000.00 and remands this matter to
21 state court accordingly.

22 23 **V. CONCLUSION**

24 **IT IS ORDERED** that Clerk of the Court shall remand this matter to the Eighth Judicial
25 District Court in Clark County, Nevada for lack of subject matter jurisdiction.

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